

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1870.02
COMPLAINT INVESTIGATOR: Becky Bowman
DATE COMPLAINT FILED: February 6, 2002
DATE OF REPORT: April 22, 2002
RECONSIDERATION REQUESTED: no
DATE CLOSED: June 28, 2002

COMPLAINT ISSUES:

Whether the Indiana Department of Correction (IDOC) and the North Central Juvenile Correctional Facility (NCJCF) violated:

511 IAC 7-27-7(a) by failing to implement various students' individualized education programs (IEPs) in November 2001, when the location of the students' educational services changed from the Intensive Treatment Unit to the building whether other students receive their education.

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to develop or revise goals and/or objectives of the IEPs of four students.

511 IAC 7-17-72 by failing to assign a teacher of record (TOR) to three students.

511 IAC 7-17-72 by failing to ensure that, when the students in the ITU began receiving educational services outside the ITU, the students' TORs:

- a. informed each of the student's teachers of his or her responsibilities in implementing the student's IEP; and
- b. made sure that each of the students' teachers had access to the student's IEP.

On March 6, 2002, the associate superintendent granted an extension of time to April 5, 2002, to complete the complaint investigation report. The extension was necessitated by the need to conduct onsite record reviews and interviews and the inclement weather precluding one of the scheduled onsite visits. On April 5, 2002, the associate superintendent granted a second extension of time to April 22, 2002.

FINDINGS OF FACT:

1. The students are currently or were previously incarcerated in a state juvenile correctional facility and have been determined to be eligible for special education and related services.
2. Prior to November 20, 2001, students residing in the Intensive Treatment Unit (ITU) received their educational services in the ITU, which is separate from the rest of the NCJCF population. On or about November 20, 2001, the students residing in the ITU began receiving their educational services in the same building as the other students. At the time of this move, thirteen students in the ITU were receiving special education and related services. The complainant asserts that when the location of instructional services changed, the students' IEPs were not implemented in the new setting.
3. The IEPs for these thirteen students, in effect on November 20, 2001, required the following:
 - a. Student TA: 240 minutes of special instruction each week in a separate class
 - b. Student DB: 240 minutes of special instruction each week in a resource room

- c. Student TB: special instruction in a separate class 50% of the time
 - d. Student PD: 320 minutes of special instruction each week in a separate class plus 90 minutes of recreational therapy each week
 - e. Student DG: 240 minutes of special instruction each week in a separate class
 - f. Student CH: 320 minutes of special instruction each week in a separate class
 - g. Student LH: special instruction in a resource room, length/frequency not identified
 - h. Student AL: 240 minutes of special instruction each week in a separate class plus 30 minutes of services in a resource room each week
 - i. Student MO: 240 minutes of special instruction each week in a separate class
 - j. Student KP: 700 minutes of special instruction each week in a separate class
 - k. Student JV: special instruction in a resource room for language arts, reading, and science 50% of the time plus 30 minutes per week of speech therapy
 - l. Student AW: 630 minutes of special instruction each week in a separate class for reading, language arts, and math
 - m. Student KW: 120 minutes of special instruction each week in a resource room.
4. NCJCF and IDOC staff acknowledge that these students' IEPs were not implemented as written subsequent to the students joining the general population for educational purposes.
 5. The complainant asserts that teachers were asked to develop goals and objectives outside of the CCC forum for inclusion in the IEPs of Students SJ, RD, LB, and AG. The facility's coordinator acknowledged that when a TOR is unable to attend a CCC meeting, the TOR may develop the goals and objectives subsequent to the CCC meeting. The coordinator reports that she sends the goals and objectives to the parent and asks the parent to indicate agreement by signing and returning the signature page of the IEP.
 6. The TOR did not attend the July 30, 2001, CCC meeting for Student LB, although the *Case Conference and IEP Forms* (Form 202) indicate that the TOR was present. In a memorandum to the TOR, dated July 31, 2001, the coordinator requested that the TOR develop goals and objectives for Student LB in the areas of reading and language arts. The memorandum also indicates that the TOR is to meet with three of the student's teachers to discuss the goals and objectives as soon as possible so that they could be sent to the parent the following week. Although there is no correspondence or other documentation in Student LB's file to indicate that the goals and objectives were ever sent to or discussed with the parent, the IEP contains a signature page, signed by the parent and dated August 11, 2001.
 7. The complainant asserts that no TOR was assigned for Students TA, AL, and DG. The TOR assignment lists dated November 13, 2001, through January 25, 2002, identify a TOR for each of these students. The same TOR was assigned for each of these students for this time period. The bi-weekly TOR assignment lists are provided to each TOR.
 8. On November 20, 2001, when the ITU students began attending classes with the general population, one TOR was assigned eleven of these students, and another TOR was responsible for the remaining two ITU students. On November 27, 2001, the thirteen students were assigned among four TORs, and the students' class schedules changed from what they had been on November 20, 2001. Three of the teachers of service report that the assigned TOR did not inform them their responsibilities regarding the implementation of one or more students' IEPs. All four of the TORs failed to carry out this activity for one or more students assigned to his or her caseload.
 9. In November 2001 all teachers had immediate access to students' IEPs between the hours of 7:30 a.m. and 4:00 p.m. At all other times, the students' educational files were secured in a locked office. The teachers were aware of these time parameters, and any teacher who needed access beyond business hours could make arrangements with the special education coordinator or the secretary to

obtain a file during those hours and keep the file beyond 4:00 p.m. A teacher's weekly schedule allowed time during the day to access educational records as the teachers are not required in the classroom before 8:00 a.m., between 10:45 a.m. and 1:15 p.m., and after 2:45 p.m. During the last week of November 2001, all TORs were also provided two class blocks per week of preparation time during which they could access student records as needed. In early 2002, all teachers were provided with a key to the office in which student records are stored, and access to such records is at the teacher's discretion.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 indicate that the IEPs of the ITU students who began attending classes with the general population were not implemented in the new setting. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to each of these thirteen students.
2. Findings of Fact #5 and #6 reflect that, in at least one instance, the TOR was asked to develop goals and objectives subsequent to and outside of the CCC forum. There is no documentation to corroborate that these unilaterally developed goals and objectives are discussed with the parent prior to their inclusion in the IEP. Therefore, a violation of 511 IAC 7-27-4(c) is found.
3. Finding of Fact #7 indicates that a TOR was and continues to be assigned for each of the three students in question. Therefore, no violation of 511 IAC 7-17-72 is found.
4. Finding of Fact #8 reflects that during the early weeks when the ITU students participated in instructional settings with the general population, the TORs failed to inform some of the teachers of service of their responsibilities in implementing one or more students' IEPs. Therefore, a violation of 511 IAC 7-17-72 is found with regard to the TORs' failure to carry out this responsibility.
5. Finding of Fact #9 demonstrates that, between November 2001 and January 2002, teachers could access a student's educational file between 7:30 a.m. and 4:00 p.m., but had to make arrangements with the coordinator or secretary to access a file outside of those hours as the records were secured in a locked office. Currently, all teachers have unlimited access to students' IEPs. There is no requirement that a teacher have access to a student's educational record twenty-four hours a day. Therefore, no violation of 511 IAC 7-17-72 is found with regard to ensuring a teacher's access to a student's educational record.

The Department of Education, Division of Exceptional Learners, requires the following corrective action based on the Findings and Conclusions listed above:

The Indiana Department of Correction and the North Central Juvenile Correctional Facility shall:

1. Reconvene the CCC for each student identified in Finding of Fact #3 who remains at the facility. The CCC shall be properly constituted and shall determine the compensatory services to be provided each student as the result of the facility's failure to implement the student's IEP as written. The CCC Report shall document the CCC's discussion of compensatory services, and the IEP shall clearly identify the type of service to be provided as a compensatory service, as well as the length, frequency, duration, and location of that service. A copy of each student's CCC Report/IEP shall be submitted to the Division no later than May 28, 2002.
2. Review, and if necessary, revise policies and procedures to ensure that goals and objectives are discussed during a CCC meeting. Draft goals and objectives may be prepared prior to a CCC and presented at the CCC as proposed goals and objectives. If it is the TOR's responsibility to prepare

draft goals and objectives prior to the CCC meeting for the CCC's consideration, procedures should be in place to ensure that proposed goals and objectives are prepared and available in the event of the TOR's unexpected absence. A copy of the CCC procedures shall be submitted to the Division no later than May 28, 2002.

3. Send a written reminder to all TORs regarding their responsibilities pursuant to 511 IAC 7-17-72, especially the responsibility to inform each of a student's teachers or other service provider of his or her responsibility in implementing that student's IEP. A copy of the memorandum and a list of all individuals to whom the memorandum was sent shall be submitted to the Division no later than May 28, 2002.